

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

CATALINO VILLEGAS, JOSE B. §
JOYA, ERICK CASTRO, JORGE §
REYES, WALTER ALONSO ORTEGA, §
ARCESIO BECERRA, J. JESUS §
CONTRERAS and ANTONIO §
FERNANDEZ, Individually and on §
Behalf of All Other Similarly Situated, §
§
v. §
§
GRACE DISPOSAL SYSTEMS, LLC §
d/b/a ROYAL DISPOSAL & §
RECYCLING, ROYAL DISPOSAL §
AND RECYCLE, LLC., DAVID §
HANNA, and CHARLES C. GREGORY, §
III §

NO. 4:13-cv-00320

**MOTION TO VACATE, MOTION FOR RECONSIDERATION, AND MOTION FOR
EXTENSION OF TIME TO FILE RESPONSE**

Defendants Grace Disposal Systems, LLC d/b/a Royal Disposal and Recycling, Royal Disposal and Recycle, LLC, David Hanna, and Charles C. Gregory, III (collectively “Defendants”) files this Motion to Vacate, Motion for Reconsideration and Motion for Extension of Time to File Defendants’ Response to Plaintiffs’ Motion for Conditional Certification.

**I. DEFENDANTS’ PERIOD TO CONDUCT DISCOVERY AS TO CONDITIONAL
CERTIFICATION HAS YET TO EXPIRE**

The Parties could not reach an agreement regarding the scheduling order and each side submitted competing proposed scheduling orders. On August 7, 2013, the Court entered its Rule 16 Scheduling Order. The Court elected a bifurcated discovery approach in this FLSA action similar to the one Defendants had proposed. The Court’s Order provided a date for Plaintiff to file for conditional certification, but contains no specified date for Defendants’ response to conditional certification. But most importantly, the Order states that “**discovery as to the conditional collective action certification and all initial plaintiff shall be completed by**

November 15, 2013.” Doc. No. 19. The Order also sets a hearing regarding conditional collective action certification at 10:00 a.m. on December 18, 2013 with counsel set to appear.

On October 25, 2013, the Court granted Plaintiff’s motion for conditional certification. *Id.* Defendants seek to vacate the order granting conditional certification, for the Court to reconsider, and extend the time for defendants to respond. The Court stated in its Order that Defendants failed to respond and their response was deemed as unopposed. This case was set for oral submission by order under Local Rule 7.5.B.

Defendants promptly sought to complete written discovery and scheduled the depositions of all 8 Plaintiffs. Plaintiffs’ responses to Defendants’ written discovery was initially due September 25, 2013. At the request of Plaintiffs, Defendants agreed to extend the Plaintiffs time to respond to written discovery to October 3, 2013. Defendants deposed Plaintiffs Arcesio Becerra, Jose Joya and Jorge Reyes on October 23 and 24, 2013. The depositions of Plaintiffs Alonso Ortega and Antonio Fernandez are currently scheduled for Tuesday, October 29, 2013. The deposition of Plaintiff Erick Castro is currently scheduled for October 30, 2013. Counsel for Plaintiff has been unable to provide dates for the depositions of two of the Plaintiffs - Catalino Villegas and J. Jesus Contreras.

The threshold issue pertaining to conditional certification is whether the named plaintiff(s) are similarly situated to the proposed class members. *Mooney v. Aramco Servs. Co.*, 54 F.3d 1207 (5th Cir. 1995). The Court’s Order provided certain time period to obtain discovery as to the grounds for conditional certification. Defendants are collecting the necessary evidence within the period proscribed by the Rule 16 Scheduling Order to support the position that the proposed class is not similarly situated. Defendants respectfully request that they be permitted sufficient time to conduct the necessary discovery to fully respond to Plaintiff’s Motion for Conditional Certification. Plaintiff will suffer no prejudice from the granting of this Motion.

Defendants respectfully request that the Court set a deadline for Defendants to respond to Plaintiff's Motion for Conditional Certification 7 days after the end of the period which the Court for which the Court provided that Defendant could conduct discovery regarding certification of any conditional collective action. Alternatively, Defendants seek an extension until Friday, November 1, 2013 to file their response.

Defendants request an oral hearing on this motion if deemed helpful to the Court.

Respectfully submitted,

MEHAFFYWEBER, P.C.
Counsel For Defendants

By: /s/ Konor Cormier
Konor A. Cormier
Attorney in Charge
State Bar No. 24040731
One Allen Center
500 Dallas, Suite 1200
Houston, Texas 77002
Telephone: 713-655-1200
Telecopier: 713-655-0222

CERTIFICATE OF SERVICE

This is to certify that a true and correct copy of the above and foregoing instrument has been forwarded by certified mail/return receipt requested to the following on this the 25th day of October, 2013:

Terrence Robinson
Lakshmi Ramakrishnan
Kennard Blankenship Robinson P.C.
5433 Westheimer, Ste. 825
Houston, Texas 77076

/s/ Konor Cormier
Konor A. Cormier

CERTIFICATE OF CONFERENCE

I certify that I conferred with opposing counsel and there are opposed to this Motion

/s/ Konor Cormier
Konor A. Cormier